

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Application of

CRYSTALLEX INTERNATIONAL  
CORPORATION,

Petitioner,

For a Judgment Pursuant to Federal Rule of Civil  
Procedure 69, and CPLR 5225(b) and 5227, to  
Compel Payment of Money and Delivery of  
Property,

v.

THE BANK OF NEW YORK MELLON,

Respondent,

and

THE MINISTRY OF DEFENSE OF THE  
BOLIVARIAN REPUBLIC OF VENEZUELA,

Proposed Intervenor-  
Respondent.

Case No. 17 Civ. 7024 (VSB)

**STIPULATION AND PROPOSED  
ORDER AND JUDGMENT**

WHEREAS, Petitioner Crystallex International Corporation (“Petitioner”) filed its  
Petition for Turnover Pursuant to Federal Rule of Civil Procedure 69 and CPLR 5225(b) and  
5227 on September 14, 2017 (the “Petition”) [ECF No. 1];

WHEREAS, the subject of the Petition is the funds in an account (the “Account”) established pursuant to a Trust Agreement (the “Trust Agreement”), dated June 17, 1997, between The Bank of New York, as predecessor-in-interest to The Bank of New York Mellon, as trustee (“Respondent”) and The Republic of Venezuela, now known as The Bolivarian Republic of Venezuela (“Venezuela”);

WHEREAS, Article V of the Trust Agreement provides, in relevant part:

Section 5.2 The duties, responsibilities and obligations of the  
Trustee shall be limited to those expressly set forth herein and no

duties, responsibilities or obligations shall be inferred or implied. ... The Trustee shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

Section 5.3 If at any time the Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Funds (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the Trust Funds), the Trustee shall promptly give notice thereof to the Republic, provided that the Trustee is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if the Trustee complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

...

Section 5.7 The Republic shall be liable for and shall reimburse and indemnify the Trustee and hold it harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) (collectively, "Losses") arising from or in connection with or related to this Agreement or being Trustee hereunder (including but not limited to Losses incurred by the Trustee in connection with its successful defense, in whole or in part, of any claim of negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require the Trustee to be indemnified for Losses caused by its negligence or willful misconduct.

WHEREAS, Petitioner holds a judgment of approximately \$1.4 billion against Venezuela, which judgment has been registered with the United States District Court for the Southern District of New York;

WHEREAS, Proposed Intervenor The Ministry of Defense of the Bolivarian Republic of Venezuela (the "Ministry") filed a Motion to Intervene and Dismiss the Petition, or Alternatively

Transfer Venue, on October 13, 2017 [ECF No. 12], and filed an amended motion on October 16, 2017 (the “Motion”) [ECF No. 17];

WHEREAS, the Ministry no longer intends to oppose Crystallex’s Petition;

WHEREAS, Huntington Ingalls Industries (“Ingalls”) is the only other entity known to have claimed an interest in the funds in the Account in any court;

WHEREAS, the Account is subject to a preliminary injunction issued by the United States District Court for the Southern District of Mississippi (the “Preliminary Injunction”) in an action between Ingalls and the Ministry currently pending in that court with civil action number 1:02cv785 (the “Mississippi Action”);

WHEREAS, the Preliminary Injunction enjoins Respondent from “transferring, or allowing to be transferred, any funds from the” Account “for any purposes other than to pay Ingalls in accordance with” the Trust Agreement, and Respondent continues to hold the Account funds subject to and in accordance with the Preliminary Injunction;

WHEREAS, Petitioner and Ingalls have entered into a settlement in regards to their respective rights in the Account, pursuant to which Ingalls has agreed that, should this Court resolve the Petition in Petitioner’s favor, Ingalls will seek the vacatur of the Preliminary Injunction, that, upon turnover of the funds, Respondent shall have no present or future obligations, liabilities or indebtedness to Ingalls under, in connection with, or relating to the Account, and that Ingalls shall waive the trust claims currently asserted in the Mississippi Action;

WHEREAS, Petitioner seeks an order in the instant proceeding granting the Petition subject to the lifting of the Preliminary Injunction in the Mississippi Action and the subsequent dismissal with prejudice of Respondent from the Mississippi Action;

WHEREAS, absent the lifting of the Preliminary Injunction, Respondent is prohibited from making any distribution to any party;

WHEREAS, Respondent's interests in this proceeding and the Mississippi Action are limited to performing its limited duties under the Trust Agreement; avoiding being the subject of orders issued by the Southern District of Mississippi and the Southern District of New York that impose conflicting duties on Respondent; and receiving payment of its fees and expenses from the Account funds, in accordance with the Trust Agreement and applicable law;

WHEREAS, subject to the preceding paragraph, Respondent asserts no claim to the Account or the funds therein;

WHEREAS, the current balance of the Account is \$43,675,371.10;

WHEREAS, Petitioner has agreed that it will not seek to enforce any order granting the Petition in its favor until such time as Ingalls's motion to vacate the Preliminary Injunction in the Mississippi Action is granted;

WHEREAS, Petitioner agrees that upon entry of judgment pursuant to this Stipulation and Proposed Order and Judgment, the levy on Respondent (the "Levy"), dated August 3, 2017, pursuant to the Writ of Execution issued out of the action captioned *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, No. 17-mc-205 (VEC), in this Court, dated July 26, 2017, shall be deemed satisfied, Petitioner will take no further action against Respondent with respect to the Levy against the Account or the funds therein, and Petitioner will take any necessary actions to cause the United States Marshals Office to withdraw, remove, or otherwise relinquish the Levy on Respondent; and

WHEREAS, an order (i) granting the Petition subject to the lifting of the Preliminary Injunction in the Mississippi Action and (ii) affirming Respondent's rights to fees and expenses

under the Trust Agreement and applicable law, should resolve all current issues between Petitioner and Respondent.

**NOW THEREFORE IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned attorneys, subject to the approval of the Court, that:

1. Respondent may recover against the Account and the funds contained therein its reasonable legal fees and expenses, in the amount of \$428,429.35;
2. The \$43,246,941.75 remaining in the Account following the payment of Respondent's reasonable legal fees and expenses shall, pursuant to CPLR 5225, CPLR 5227 and CPLR 5239, be turned over to Petitioner in partial satisfaction of its judgment against judgment debtor Venezuela;
3. Such turnover shall be contingent upon the vacatur of the preliminary injunction currently pending in the United States District Court for the Southern District of Mississippi;
4. Upon the filing of the motion to vacate the Preliminary Injunction in a form reasonably acceptable to the Respondent and the vacatur of the Preliminary Injunction in the Mississippi Action, Respondent shall disburse the funds remaining in the Account to Petitioner and any remaining claims against Respondent, including any claims relating to the Trust Agreement or the Account, shall be dismissed with prejudice;
5. Upon completion of Respondent's transfer of the funds from the Account to Petitioner, the Respondent shall be, pursuant to CPLR 5209, discharged from any liability with respect to the payment of funds in the Account or any claims to the funds therein under the Trust Agreement that may be brought by Petitioner Crystallex International Corporation, Judgment Debtor the Bolivarian Republic of Venezuela, Proposed Intervenor the Ministry of Defense of

the Bolivarian Republic of Venezuela, and any other claims relating to the Trust Agreement or the Account or the funds therein that may be asserted by any other party shall be forever barred;

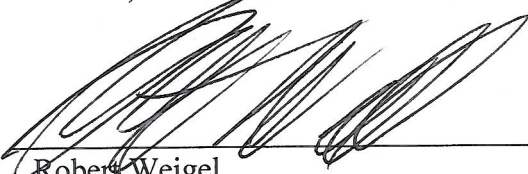
6. Upon completion of the transfer of funds from the Account to Crystallex, this Petition shall be dismissed with prejudice, and

7. This Stipulation may be executed in counterparts; facsimile and PDF signatures shall be deemed originals for all purposes.

*[Remainder of page intentionally left blank.]*  
*[Signature page follows.]*

Dated: New York, New York  
March 7, 2018

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*Attorneys for Proposed Intervenor The  
Ministry of Defense of the Bolivarian Republic  
of Venezuela and the Bolivarian Republic of  
Venezuela*

SO ORDERED:



Vernon S. Broderick  
United States District Judge

Date: 4/2/2018

Dated: New York, New York  
March \_\_, 2018

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*Attorneys for Proposed Intervenor The  
Ministry of Defense of the Bolivarian Republic  
of Venezuela and the Bolivarian Republic of  
Venezuela*

**SO ORDERED:**

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Vernon S. Broderick  
United States District Judge

*xm*

Date: \_\_\_\_\_